



Ein cyf/Our ref: LG/3222/20

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1 October 2020

Dear Mick

I wish to provide an update on the UK Fisheries Bill, ahead of the scheduled Legislative Consent Motion (LCM) debate, which has been rescheduled for 6 October. Thank you for your report, published on 24 September, on the Supplementary Legislative Consent Memorandum (Memorandum No.2). I have responded to your recommendations in this letter which satisfies your **recommendation 1**.

### **House of Commons Committee stage**

A Supplementary Legislative Consent Memorandum (Memorandum No. 3) was laid on 16 September in respect of amendments tabled at Commons Committee stage. I have today laid a final Supplementary Legislative Consent Memorandum (Memorandum No. 4) (SLCM (No.4)), in advance of the LCM debate, which captures those amendments agreed at Commons Committee stage which had not been covered in the Memorandum laid on 16 September and clarifies some amendments made previously (Your **recommendation 8** is responded to via SLCM (No.4)). A new version of the Bill has been published and I have provided the link here:

<https://publications.parliament.uk/pa/bills/cbill/58-01/0181/200181.pdf>

References to clause/schedule numbers in this letter relate to the new version of the Bill.

### **House of Commons Report stage**

My officials provided input during the early Bill stages to ensure all amendments which related to the legislative competence of the Senedd could be included at Commons Committee stage. However, as a result of delays by UK Government, some further amendments will be sought at Commons Report stage.

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To support the Senedd consideration of the LCM, I have set out details here of further amendments being pursued:

Legislation (Wales) Act 2019 – amendments are being sought to apply the Legislation (Wales) Act 2019 to subordinate legislation made under the Bill and which will apply in relation to the Welsh zone. These amendments are consequential upon clause 43 of the Fisheries Bill which is extending the Senedd’s competence to the Welsh zone in relation to fishing, fisheries and fish health.

Agency Arrangements power – amendments are being sought to provide powers for the four fisheries administrations to enter into agency type arrangements. We currently have a power under section 83 of the Government of Wales Act 2006 which enables the Welsh Ministers to make this type of arrangement with Welsh and English public bodies. We have sought the same type of power in relation to fishing, fisheries and fish health functions only to enable the four UK administrations to establish helpful joint working arrangements which would enable collaboration and the efficient exercise of functions to achieve robust and effective fisheries management outcomes.

Schedule 3 - Sea Fishing Licences: Further provision, and Schedule 8 – Powers to make further provision: devolved authorities – we continue to seek improvement of some aspects of the scope and operation of the Welsh Ministers powers and their relationship with the corresponding Secretary of State Bill powers.

#### Schedule 10 – Amendments of the Marine and Coastal Access Act 2009

- a small amendment is needed to make it an offence to contravene an order under 134B of the Marine and Coastal Access Act 2009 (MCAA) (as amended by the Fisheries Bill), which was unintentionally omitted.
- an amendment is sought to remove subsection (2) of section 189 of the MCAA. Under section 189 the Welsh Ministers may by order make provision in relation to Wales, to manage exploitation of sea fisheries. Subsection (2) currently limits the availability of that power, such that it may only be used by the Welsh Ministers if no other alternative legal power can be identified. This restriction is unnecessary and I am seeking its removal.
- an amendment is sought to the consultation requirements that apply to the Welsh Ministers order making power under section 134A and 134B.

I will inform the Committee and Members of the Senedd up to date on any changes made at Commons Report stage, which impact on the legislative competence of the Senedd, following the LCM debate.

#### **Clause 23 (formally 24) – determination of fishing opportunities**

In relation to clause 23 of the Bill, and **recommendation 2** in your report, I wrote to the Climate Change, Environment and Rural Affairs and Legislation, Justice and Constitution Committees on 3 September and advised I had written to the UK Government to seek agreement on the key issues on which I need assurance in order to recommend the Senedd gives consent to the Bill. I have received a response from DEFRA and have attached the exchange of letters at Annex 1 and 2.

I acknowledge the concerns raised by Committees in their scrutiny and we continue to press for swift progress on the Fisheries Framework Memorandum of Understanding (MoU). It was my intention for the Committee to have the opportunity to review the MoU prior to seeking the Senedd’s consent, however, given the wide ranging nature of the MoU, its dependency on the Joint Fisheries Statement and the timings of the Bill progressing through UK Parliament, this is now not possible.

I can assure the Committee and Members of the Senedd I am confident the commitments made by UK Government, including in the exchange of letters attached, provides the ongoing assurance needed to fully resolve these concerns and I am seeking Senedd consent on this basis. We will continue to work with UK Government to finalise the MoU, within the parameters set out in the letters.

### **Sunset provisions**

I also wish to address a point raised by Committee in its scrutiny regarding sunset provisions and **recommendation 3** of your report. My position remains we do not support the inclusion of sunset provisions in this Bill, for reasons I have already set out in my responses to Committee. However, given the strength of feeling here and recognising the concerns raised, I will commit to making a biennial report to the Senedd on the implementation of the provisions in the Bill which relate only to Wales, until such time as a Welsh Fisheries Bill is introduced.

### **Schedule 3**

Your **recommendation 4** seeks for the Bill to be amended to remove reference to 'or expedient' from paragraphs 1, 2 and 5 of Schedule 3, and in **recommendation 5** you ask me to clarify under what circumstances the Welsh Ministers would consider it expedient to exercise the powers in Schedule 3 as a sea fish licensing authority.

We have no plans at the moment to use these powers, but I would note these licensing powers may be part of the statute book for many years, possibly decades, like previous sea fishing licensing primary legislation. As such, it is necessary to have this power, and to have it to the full extent that other UK sea fish licencing authorities will have it, to attach licence conditions as appear necessary or expedient, to respond to any changing needs to keep fisheries licensing up to date and fit for purpose. Regulations made under this power will be subject to Senedd scrutiny.

### **Schedule 11 - Retained direct EU legislation: minor and consequential amendments**

Your **Recommendation 6** seeks for me to write to the Committee and explain whether the Welsh Ministers have lost functions as result of previous amendments made, or as a result of amendments now proposed in the Bill, to the following:

- The Common Fisheries Policy Regulation (Regulation (EU) No 1380/2013);
- The North Sea Multi-Annual Plan (Regulation (EU) 2018/973);
- The Western Waters Multi Annual Plan (Regulation (EU) 2019/472),

In **Recommendation 7** you ask, if functions have been lost to the Welsh Ministers for me to write to the Committee and explain how those functions are to be restored.

The Welsh Ministers have not lost functions. The functions you refer to were previously European Commission functions and upon implementation period completion day transfer to the Secretary of State as the subject matter to which they relate is reserved. The functions under these retained EU law provisions vest in the Secretary of State for the whole of the UK, and therefore Wales is in the same position in respect to this provision as the other devolved administrations. I refer to Annex 1 to my letter to the Committee dated 3 September 2020 for a fuller discussion of the functions.

## **Consent**

I am grateful to Members of the Legislation, Justice and Constitution Committee for its scrutiny of the Bill and for indicating it would recommend consent, subject to clarity and reassurances, which I hope I have now provided. I can confirm I have tabled a consent motion recommending the Senedd consent to the UK Fisheries Bill.

I have written in similar terms to Mike Hedges MS, Chair of Climate Change, Environment and Rural Affairs Committee and have copied this letter to all Members of the Senedd.

Regards

A handwritten signature in black ink that reads "Lesley Griffiths". The signature is written in a cursive style with a large, sweeping flourish at the end of the name.

**Lesley Griffiths AS/MS**

Gweinidog yr Amgylchedd, Ynni a Materion Gwledig  
Minister for Environment, Energy and Rural Affairs

Lesley Griffiths AS/MS  
Gweinidog yr Amgylchedd, Ynni a Materion Gwledig  
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1 September 2020

Dear Victoria,

### **Determination of fishing opportunities**

Further to your letter of 8 April 2020 I am seeking an agreement between our Governments on the use of the power to determine fishing opportunities within clause 24 and consultation requirements within clause 25 of the UK Fisheries Bill. I will need to provide the Senedd with assurance we have reached agreement on the detail of how our Governments will work together in relation to the use of this power before the Senedd debate on legislative consent (29 September). This agreement will be in lieu of the Senedd having the opportunity to consider the detail of the Fisheries Framework Memorandum of Understanding (MoU) which I note, due to other pressures, is still in development.

I am conscious we are building on many years of close collaboration in fisheries management. We do not want to curtail any of the good practice already in place and

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see this as an opportunity to enhance and clarify the existing arrangements and responsibilities. I am seeking your agreement on the following matters:

### **Exercise of clause 24 power**

Clause 24 primarily provides a legal mechanism to give effect to agreements reached at any future coastal states negotiations, setting the top level UK catch limit for the calendar year or relevant period. It is our expectation the power will not normally be used for any other purpose, in recognition of the fact setting catch limits for species not covered by coastal states agreements, is a matter for the four administrations of the UK to act in relation to their separate jurisdictions.

As you know our concern is the power may be exercised in a way which impacts solely on a Welsh stock, which would otherwise be entirely managed by the Welsh Ministers, without meaningful input from Welsh Ministers, and this is why we have agreed to set out the assurances around the use of the power in an MoU.

### **Retain existing engagement arrangements**

Fisheries management historically, and necessarily, has always required fisheries administrations to work collaboratively as equal partners across the UK. I would like to see in the MoU a statement confirming a continuing commitment to these existing best-practice arrangements and governance principles, locking them in place as a collective UK position. I would like to see the MoU confirm these arrangements which follow the principles of: mutual respect, shared responsibility, open and transparent information sharing, and clear dispute resolution procedures.

I expect the detail to include a no surprises approach, being enabled by the ongoing governance arrangements via the SSG and working groups, as well as Welsh representation in all matters of interest to Wales.

### **Meaningful consultation**

Clause 25, requires the Secretary of State to consult the Welsh Ministers before making or withdrawing a determination of fishing opportunities. This will provide the opportunity for the Welsh Ministers to set out its position, and for the Secretary of State to explain the reasons for the final form of the determination and how UK Government has sought to reach agreement.



I am mindful of the close link to the coastal state negotiations and the desire to issue the determination as early as possible. I propose the following, which reflects a reasonable consultation approach but am open to suitable alternatives we can discuss and agree as the MoU wording is developed:

- the Welsh Ministers are given sight of the draft determination in writing in advance;
- there is a period of 21 days to respond to the consultation;
- the Welsh Ministers can make written representations within this period;
- the Secretary of State provides a written response to any representations made.

It may be possible to reduce these steps where the determination reflects a decision at Coastal States where Welsh Government formed part of the delegation.

### **Dispute avoidance and resolution**

I recognise dispute avoidance processes linked to portfolio level structures are already in place and well established, via the Senior Officials Programme Board and where Ministerial escalation is required, via the Inter-Ministerial Group – Environment, Fisheries and Rural Affairs (IMG-EFRA).

The fisheries administrations and their officials have a strong track record of working closely together to develop fisheries management policy and resolve disputes before using DRM processes. Although, I note the existing DRM is a default position, it would be helpful, to provide the necessary reassurances and certainty, to have acknowledgement the DRM would be available for a clause 24 determination.

### **Progress on the Memorandum**

I would be grateful if you could confirm your officials will work with mine to finalise the wording for the MoU by the end of the year, reflecting what we have agreed by this exchange of letters. I would also be grateful if you could make the above commitments on the floor of the House of Commons during the remaining stages.

**Lesley Griffiths AS/MS**  
Gweinidog yr Amgylchedd, Ynni a Materion Gwledig  
Minister for Environment, Energy and Rural Affairs



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Llywodraeth Cymru  
Welsh Government

I would be grateful for a response to this letter as soon as possible so we can move ahead with the legislative consent process.

Regards

A handwritten signature in black ink that reads "Lesley Griffiths". The signature is written in a cursive style with a large, sweeping flourish at the end.

**Lesley Griffiths AS/MS**  
Gweinidog yr Amgylchedd, Ynni a Materion Gwledig  
Minister for Environment, Energy and Rural Affairs

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18 September 2020

Dear Lesley,

Thank you for your letter of 1 September about the determination of fishing opportunities under clause 23 of the Fisheries Bill.

As I hope Defra Ministers have made clear throughout the passage to the Fisheries Bill, we have very much appreciated the collaborative approach taken both at official and Ministerial level. We have also been careful to explain how the Bill seeks to respect the devolution settlements. This is an approach built on many years of close working, and is one we intend to follow.

As you note, clause 24 provides the Secretary of State with a statutory duty to consult the Devolved Administrations before making or withdrawing a determination. While the precise details will need to be worked out, we intend for these to be meaningful consultations.

Whilst we are committed to providing adequate time for formal consultation (I am sure there will be plenty of engagement at official level prior), it might not always be possible to allow a 21 day consultation period or to commit to a Ministerial exchange of letters as you suggest. However, to provide some further reassurance, we think that the memorandum of understanding (MoU) could usefully set out principles for consultation. In addition, the MoU will set out a fisheries dispute resolution process between the Fisheries Administrations, incorporating and building on existing processes where appropriate. I understand that discussions on the process for determinations are well underway between officials within the Fisheries Management Working Group.

I am grateful for your comments on the need to make rapid progress to draft and finalise the MoU. Defra has a team of officials ready to contribute to that process.

Given the rapid progress of the Bill, and parliamentary procedure in Westminster, there may not now be an opportunity to make the reassurances you suggest on the floor of the House. However, I trust that this letter will be sufficient and that swift progress to deliver legislative consent can be made.



Yours sincerely,

Victoria Prentis

**VICTORIA PRENTIS MP**